



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY :
AND MUNICIPAL EMPLOYEES, LOCAL 1801 :

Complainant :

CASE NO. A-0470:2

v. :

DECISION NO. 84-60

TOWN OF SALEM, NICK MANOLIS, :
DIRECTOR OF PUBLIC WORKS :

Respondent :

APPEARANCES

Representing American Federation of State, County and Municipal Employees, Local 180

James C. Anderson, Executive Director, Council 68

Representing the Town of Salem, Nick Manolis, Director of Public Works

Robert Leslie, Esq., Counsel
Nicholas Manolis, Personnel Director

BACKGROUND

On January 3, 1984, AFSCME, Local 1801 (Union) (Salem Public Works) filed a complaint of improper practice against the Town of Salem (Town) alleging violation of RSA 273-A:5, I (i). Specifically, the Union charges that the Town violated RSA 273-A:5, I (i) when it refused to fill a position covered by the collective bargaining agreement.

The Town denies any unfair practice whatever.

A hearing was held at the PELRB's office in Concord, N.H. on February 23, 1984, with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing the Town moved for dismissal on the grounds that situations including the interpretation of the contract are not within the jurisdiction of PELRB since they can be dealt with within the grievance procedure of the contract (final and binding arbitration in this case). The motion for dismissal was denied.

The PELRB found that the custodial position referred to was included in the recognition clause of the contract which also included the language that there is no "guarantee that these classifications or titles will continue to

be utilized by the Town".

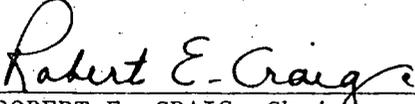
At hearing it was established that the person occupying the custodial position had retired and the personnel director of the Town had informed the Union that the job was not going to be filled. In fact, an outside service was engaged to perform the duties, as they were in other places.

The question(s) before the PELRB is whether the unit was modified unilaterally or not and whether the refusal to fill a vacant position (and hiring outside contractor) is a violation of RSA 273-A. In both cases the PELRB finds no violation occurred.

The Town did not modify the bargaining unit since the position would still be within the unit, should the Town choose to fill it; neither has the Town violated the law by refusing to fill it since the decision not to hire personnel is clearly within management's exclusive right to "the selection, direction and number of its personnel..." (RSA 273-A:1, XI; Emphasis added). The decision to use outside personnel to provide the services is also clearly within the purview of the "exclusive prerogative of the public employer", lacking any evidence of conflict with RSA 273-A.

DECISION

- (a) The PELRB finds no unfair labor practice has been committed in this case;
- (b) declines any further remedies.



ROBERT E. CRAIG, Chairman

Signed this 23rd day of August, 1984.

By unanimous vote. Chairman Robert E. Craig, presiding. Members Robert D. Steele and Russell F. Hilliard present and voting. Also present Evelyn C. LeBrun, Executive Director.